

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TYRONE JOHNSON,

Plaintiff,

vs.

**Case No.: 2:15-cv-817
JUDGE SMITH
Magistrate Judge King**

TOLEDO POLICE DEPARTMENT, *et al.*,

Defendants.

ORDER

On April 29, 2015, the United States Magistrate Judge issued a *Report and Recommendation* recommending that this case be dismissed for lack of subject matter jurisdiction and/or failure to state a claim upon which relief can be granted. Specifically, the ODRC is a state agency and is absolutely immune from suit pursuant to the Eleventh Amendment to the United States Constitution. Further, Plaintiff's challenges to his conviction and/or confinement must be brought on direct appeal or via habeas corpus. Finally, Plaintiff waited more than two years after the events about which he now complains and therefore such claims are untimely. (*See Report and Recommendation*, Doc. 5). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff Johnson's Objections to the *Report and Recommendation*. (*See* Doc. 6). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff's objections present the same issues presented to and considered by the Magistrate Judge in the *Report and Recommendation*. Plaintiff objects to the Magistrate Judge's

conclusions regarding subject matter jurisdiction and failure to state a claim. He also appears to challenge the statute of limitations finding by arguing that his claims arose in 2014 after the Ohio Innocence Project conducted a review of his case. (*See* Objections at 1). However, as the Magistrate Judge thoroughly discussed in the *Report and Recommendation*, claims under 42 U.S.C. §§ 1983 and 1985 must be initiated within two years from the time the cause of action accrues. Therefore, for the reasons stated in the *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit and are hereby **OVERRULED**.

The *Report and Recommendation*, Document 5, is **ADOPTED** and **AFFIRMED**. Plaintiff's Complaint is hereby dismissed in its entirety.

The Clerk shall remove Documents 2 and 5 from the Court's pending motions list. The Clerk shall terminate this case.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT